IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTIETH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

***

WRIT PETITION NO : 836 of 1999

Between :

P. Kannaiah S/o. Pandaranadar, Stall No.3, and R/o. Behind Venkateswara Swamy Temple, Gamandlapalem, Gudur, Nellore District.

..... PETITIONER

AND

1 The Principal Secretary to Govt. of A.P., Municipal Administration and

Urban Development (J1) Department, Secretariat Bldgs, Hyderabad.

2 The Commissioner and Director of Municipal Administration, Govt. of A.P., Hyderabad.

3 The Gudur Municipality, rep. by its Commissioner, Gudur, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction, particularly one in the nature of Writ of Mandamus, declaring the action of the 3rd respondent in not considering the case of the newly construct shopping complex at Old Bus Stand Area of Gudur Town in Nellore District as per the orders of the 1st Respondent in G.O.Rt.No. 602, Municipal Administration and Urban Development (J1) Department, Dated: 27-7-98 is arbitrary, unreasonable and consequently direct the 3rd respondent to allot shop room in the front side i.e., Opposite to Hospital Road, in the Newly Constructed Shopping Complex, in the Old Bus Stand Area of Gudur Town, Nellore District as per G.O.Rt.No. 602, Municipal Administration and Urban Development (J1) Department, Dated:27-7-98 and pass such other orders as this Hon'ble court may deem fit and proper in the circumstances of this case.

Counsel for the Petitioner: MR.K.MURALIDHAR REDDY

Counsel for the Respondents.: GP FOR HOUSING

The Court made the following at the admission stage: (Order follows 2nd page)

O R D E R:

This writ petition is filed seeking to declare the action of the third respondent in not considering the case of the petitioner for allotment of shop in the newly constructed shopping complex at old bus stand area of Gudur town in Nellore district pursuant to the orders passed by the first respondent in GO.Rt.No.602, Municipal Administration and Urban Development (J1) Department, dated 27-7-1998 as arbitrary, unreasonable and consequently direct the third respondent to allot shop opposite to Hospital road in the newly constructed shopping complex in the old bus stand area of Gudur town, Nellore district as per the said G.O.

The case of the petitioner is that he is a original lessee of stall no.6 and has been continuing for the last thirty years. The third respondent is renewing the lease from time to time by enhancing the rent. The lease of the petitioner has been expired by 31-3-1996 and thereafter the third respondent decided to renew the lease for a further period of three years by enhancing 50% of the existing rent. Accordingly, he

deposited three months rent in advance and continuing as lessee in the respective shop.

While things stood thus, the third respondent decided to demolish the old shopping complex and proposed to construct new shopping complex with a view to increase financial stability of the third respondent-Municipality. Thereafter, the third respondent passed a resolution wherein it was decided to allot the shops to all the original lessee including the petitioner.

The petitioner submits that some of the original lessees have leased out their shop rooms by dividing their respective shops to sub-lessees. Prior to demolition of old shop rooms, sub-lessees also made representation to the third respondent for allotment of shops on par with the original lessees. Thereafter, the petitioner and other original lessees approached the third respondent for allotment of shops. Though the third respondent agreed to consider the case but the third respondent passed resolution no.261, dated 22-2-1997 resolving to allot shop rooms to the sub-lessees of old bus stand after construction of shopping complex. In the said resolution, the third respondent mentioned the names of three original lessees and 13 sub-lessees but the name of the petitioner does not find place in the said resolution.

On the other hand, the third respondent filed its counter stating that the petitioner is not doing business in old bus stand, wherein old shops were demolished and new shops were constructed and they were allotted to the persons who are conducting business in the old existing shops. The petitioner is a wholesale vegetable merchant

and he has been allotted shop in the vegetable market and is running the business there and thereafter he has not filed any application seeking for the allotment of shop. The said allotment is only for three years and the said lease period has been expired and therefore, as the petitioner is not conducting business in the existing old shops and he cannot seek allotment of new shop in the newly constructed complex. Moreover, all the shop rooms in the front side of the shopping complex is already allotted to persons in accordance with GO.Rt.No.404, dated 18-5-1998 and G.O.Rt.No.602, dated 27-7-1998 and also to SCs/STs and PHC and one shop by public auction and no shop is vacant in the front side of the shopping complex.

In view of the rival contentions raised by the parties, as the petitioner is not conducting business in the existing old shops and he cannot seek allotment of new shop in the newly constructed complex. Moreover, all the shop rooms in the front side of the shopping complex is already allotted to persons in accordance with GO.Rt.No.404, dated 18-5-1998 and G.O.Rt.No.602, dated 27-7-1998 and also to SCs/STs and PHC and one shop by public auction and no shop is vacant in the front side of the shopping complex. The writ petition is therefore fails and liable to be dismissed.

The writ petition is accordingly dismissed. No costs.

JULY 20, 2005. ----------

I S L. **ELIPE DHARMA RAO , J**.

To

1 The Principal Secretary to Govt. of A.P., Municipal Administration and

Urban Development (J1) Department, Secretariat Bldgs, Hyderabad.

2 The Commissioner and Director of Municipal Administration, Govt. of A.P., Hyderabad.

3 The Commissioner, Gudur Municipality, Nellore District.

4 Two CCs to Govt.Pleader for Housing, High Court Buildings, Hyderabad.

5 One CC to MR.K.MURALIDHAR REDDY, Counsel for the Petitioner.

6 Two CD copies.